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P R O C E E D I N G S**(Hearing resumed at 1:30 p.m.)**

PRESIDING OFFICER WEATHERSBY: We will resume our examination of Mr. Lawrence. Attorney Needleman.

MR. NEEDLEMAN: Thank you, Madam Chair.

MICHAEL LAWRENCE, PREVIOUSLY SWORN

CROSS-EXAMINATION

BY MR. NEEDLEMAN:

Q Hello, Mr. Lawrence. I'm Barry Needleman. I represent the Applicant. We've met before.

A Yes.

Q So am I correct that the work you did here essentially was to prepare an assessment report of the Applicant's Visual Assessment. Is that a fair way to characterize it?

A Yes.

Q You didn't do your own Visual Assessment, correct?

A Not in a complete, no, not a complete assessment.

Q And you didn't do any visual simulations, am I right?

A That's correct.

1 Q And on your Prefiled Testimony which is Exhibit
2 4, I'll just refer to it as your testimony, on
3 page 2, lines 4 through 7, I think we've heard
4 this before. You found that there were, quote,
5 "significant adverse visual impacts in thirteen
6 locations."

7 A Yes.

8 Q And I believe that there's no place in your
9 testimony where you actually concluded that the
10 Project would have an unreasonable adverse
11 effect on aesthetics as that term is used in the
12 siting statute. Is that right? I didn't see
13 that anywhere.

14 A That's correct.

15 Q On page 4, line 17, of your testimony, with
16 reference to these areas of concern, you then
17 said that the Applicant missed opportunities to
18 mitigate these impacts; is that right?

19 A Yes.

20 Q So tell me if I'm wrong, but I think what you
21 were saying is you've got 13 areas where you
22 have concern and you think there were ways to
23 mitigate those impacts beyond anything that the
24 Applicant had proposed at the time that you

1 prepared your testimony.

2 A Yes.

3 Q Okay. So I want to come back to that. Let me
4 go to Page 2 of your testimony, line 7 through
5 8.

6 You agreed here, I think generally, that
7 the Project wasn't going to be widely visible
8 because of topography and forest cover; is that
9 right?

10 A Yes.

11 Q Is that, I mean, is another way to say that that
12 the Project is essentially in a relatively flat
13 geographic area and somewhat forested?

14 A Correct.

15 Q And because it's in a flat area, even though
16 there might be a scenic resource, say, a mile
17 away, rather than the resource being up on a
18 hill where it's looking down on the project,
19 it's flat so it just might not have any
20 visibility; is that the gist of what you were
21 trying to convey?

22 A Yes.

23 Q And in your report on page 4, I think you speak
24 to this issue a little bit more and so I want to

1 bring you there for a second if I could.

2 You said I found that the height of the
3 proposed poles generally within five or ten feet
4 of the trees on either side of the existing
5 right-of-way, and the rolling topography between
6 the Project and eight of the nine sensitive
7 scenic resources generally confirms LandWorks
8 statement.

9 Do you see that?

10 A Yes.

11 Q And the statement you were referring to which I
12 think you wrote there is LandWorks was talking
13 about a quote, "lack of overall visibility," and
14 near the bottom they said "visibility is limited
15 due to the extensive tree cover and woodland
16 landscapes," and they talk about tree heights.

17 So that's essentially the point we were
18 talking about a moment ago, is that correct?

19 A Correct.

20 Q And with respect to methodology here, I'm going
21 to ask you to try to remember back to the
22 Technical Session. I asked you about your
23 methodology for how you went about doing our
24 assessment here, and you said that your view of

1 the Project followed more of the Vermont-style
2 Quechee approach. Is that right?

3 A I may have said that. Yes.

4 Q And my understanding of that, and I think you
5 described it this way, is you described the
6 context in the existing area and then you try to
7 characterize the change.

8 A Yes. You characterize the context of the area,
9 and then you look at the Project itself and you
10 say how does that fit.

11 Q Okay. And I think when we were having a
12 discussion I also asked you how you could make a
13 determination about visual change, and I think
14 what you told me is that you determined it by
15 examining the existing corridor, by doing some
16 general measuring, understanding the height of
17 existing poles, and then imagining what the
18 proposed Project would look like in the
19 corridor. Does that sound right?

20 A Yes.

21 Q So because you used that approach and because
22 you didn't use any photosimulations in doing
23 that, it would be difficult, maybe even
24 possible, for somebody to replicate the type of

1 analysis you went through; is that right?

2 A I think someone would have to use their
3 imagination based on the descriptions that I
4 elaborated on in my report.

5 Q Okay. Thank you.

6 Now, on page 2, starting with line 21 of
7 your testimony, going over to page 3, this is
8 where you identify those 13 areas which I think
9 you refer to as key observation points; is that
10 correct?

11 A Where is that?

12 Q I'm on page 2, line 21 of your testimony.

13 A Page 2, line 22?

14 Q Line 21. Right around there. Yes. Do you see
15 that?

16 A Could you repeat it now?

17 Q Yes. My question was you identified these 13
18 areas which I think you refer to as key
19 observation points in your testimony; is that
20 right?

21 A Yes.

22 Q And I assume that when you went about doing your
23 work here, Counsel for the Public didn't
24 restrain you in any way. In other words, didn't

1 tell you you can only look at this or only look
2 at that. You had free rein to assess this in a
3 way that you thought professionally appropriate;
4 would that be fair to say?

5 A Yes.

6 Q And so to the extent that you had that free
7 rein, you had an unimpeded opportunity to
8 identify any resources of concern associated
9 with this Project that you wanted to call to the
10 attention of people reading this report. Is
11 that correct?

12 A Could you repeat that?

13 Q Yes. It wasn't a great question. Let me try
14 again.

15 As someone who had, essentially,
16 professional free rein to look at this, you
17 could have called to our attention in your
18 report and your testimony any resources that you
19 had concerns about.

20 A Yes.

21 Q And, in fact, what you did is you called our
22 attention to the 13 resources that we are
23 focused on here, correct?

24 A Yes.

1 Q And in your report at page 9, you identified
2 those 13 resources that were of concern to you
3 here, and so I want to go to that for a minute.

4 A Okay.

5 Q You identified, and I think what you told me and
6 I'm not sure whether it's in your report or not,
7 you identified these 13 resources by traveling
8 around the Project area, looking at specific
9 places along the corridor, and then concluding
10 that these were ones that really required
11 further attention. Does that sound correct?

12 A Yes.

13 Q And in your testimony on page 2, line 25, you
14 said some are not scenic resources under the
15 rules. Is that right? Page 2, line 25.

16 "Some of the thirteen areas of visual
17 impact identified in my report constitute scenic
18 resources under the Committee's rules."

19 Do you see that?

20 A Yes.

21 Q And then I think you elaborated on that a little
22 bit on the next page, page 3, lines 5 through 6,
23 where you said some but not all of them qualify
24 as scenic resources; is that right?

1 A Yes.

2 Q And do you understand based on the work that
3 you've done here to date that the SEC rules
4 focus on aesthetic analysis of scenic resources?

5 A Yes.

6 Q And so we agree under the rules that the sites
7 among the 13 that you identified which are not
8 scenic resources would not actually have to be
9 evaluated under the rules; is that correct?

10 A Correct.

11 Q And we're going to get to mitigation in a
12 minute, but to the extent that, despite what you
13 just agreed to, the Applicant has agreed in
14 those conditions we saw before to mitigation of
15 some form at these 13 sites; is that correct?

16 A Yes.

17 Q So given that, is it also correct to say that
18 the Applicant in this case has actually gone
19 above and beyond what the SEC aesthetic rules
20 require?

21 A Yes.

22 Q Now, I want to talk for a minute about your 13
23 key observation points. You identified Fox
24 Point Road and Durham Point Road as areas of

1 concern, correct?

2 A Correct.

3 Q And you're aware that LandWorks actually
4 evaluated these resources; is that right?

5 A I honestly don't remember now.

6 Q Okay.

7 A I don't remember that they had. I can't
8 remember.

9 Q I'm going to represent to you in Applicant's 51,
10 starting on page 47 and there are various other
11 pages, that they were considered and if you want
12 me to pull it up I will do that.

13 A I think if you describe it I'll probably
14 remember.

15 Q Okay. Do you also recall that -- you identified
16 Route 108 as another area of concern?

17 A Yes.

18 Q And I think we heard some testimony the other
19 day that Applicant reviewed this as the Mills
20 Scenic Byway, does that sound familiar?

21 A I'm a little confused. I thought, am I
22 confusing it with Mills Road where the
23 substation is?

24 Q I think you may be, but, again, I'm just, I

1 don't want to get tripped up on it. I'm just
2 going to let the record speak on it. It was
3 Applicant's Exhibit 51 at multiple places like
4 page 46 and 53. I think, Mr. Raphael called it
5 the Mills Scenic Byway in his analysis, does
6 that sound right?

7 A Okay. Because on mine I have G and H under the
8 13, I think you're referring to Route 108
9 crossing?

10 Q You're correct.

11 A Because my, the next one down was Mill Road
12 crossing.

13 Q Got it. Okay.

14 A So I'm confusing Mill Road in that.

15 Q Now, also in your report at page 9 you listed a
16 number of sites in and around UNH. Is that
17 correct?

18 A That's correct.

19 Q You included Gregg Hall, the Main Street
20 Overpass, the Gables Apartment Complex, Gables
21 North Parking lot, things like that?

22 A Yes.

23 Q Can we agree that apartment buildings and
24 parking lots would not be scenic resources under

1 the SEC rules?

2 A The facilities might, but the landscape that's
3 beyond the existing right-of-way from those
4 places, while it might not be, I think it goes
5 to the depth of your understanding or your, the
6 way you look at scenic. I mean, if that word
7 can have kind of a meaning of attractive or
8 handsome, then we can agree that the buildings
9 themselves are not scenic resources, but that
10 the view out of them might be important for the
11 people living in the buildings.

12 Q And the rules, of course, talk about analysis
13 from scenic resources; is that right? Based on
14 your recollection?

15 A Yes. And, but I also understand that the
16 University of UNH campus is considered to
17 qualify under some of those, some of the
18 definitions of scenic resources.

19 Q And you're aware that Mr. Raphael did assess the
20 UNH campus?

21 A I'm aware of his discussion around where the
22 existing transmission line goes through, you
23 know, how he characterized that, and I'm aware
24 of the work that he did from looking from the

1 Main Street Bridge looking north. I'm aware of
2 that.

3 Q The remaining resources on your list on page 9,
4 I think it's 6 or so of them, are nondesignated
5 road crossings. Is that correct? Roads like
6 Sandy Brook Drive, Frost Drive, Cutts Road, Mill
7 Brook Road, roads like that?

8 A Yes.

9 Q And so none of those are actually scenic
10 resources under the SEC rules; is that right?

11 A That's correct.

12 Q Now, on page 4, lines 4 through 8 of your
13 testimony, you got some questions about this
14 before. But you said that Mr. Raphael's overly
15 complicated methodology appears to
16 underrepresent scenic resources and minimize
17 visual impacts of those scenic resources,
18 remember that?

19 A Yes.

20 Q And further down, starting on line 10, you said,
21 "Mr. Raphael failed to identify key objection
22 points where the Project would be prominently
23 visible, such as the road crossings listed in my
24 report," right?

1 A Yes.

2 Q His failure to identify those while of
3 importance to you was not required under the
4 rules, right? Because those road crossings, as
5 you just said, wasn't scenic resources; is that
6 fair to say?

7 A I guess it was not required, yes.

8 Q Now, I want to focus a little bit more on your
9 initial statement of here.

10 My understanding is that generally you do
11 work in Vermont; is that correct?

12 A That's correct.

13 Q And you haven't produced a visual assessment for
14 a transmission line project; is that right?

15 A That's correct.

16 Q I think you told me that your work on
17 transmission line projects had been limited to
18 representing a couple of abutting landowners; is
19 that right?

20 A That's correct.

21 Q And you haven't ever worked on a project in New
22 Hampshire before; is that correct?

23 A That's correct.

24 Q And I don't believe -- so never having worked on

1 a New Hampshire project, you certainly would not
2 have assessed a project using the SEC statute or
3 rules; is that right?

4 A That's right.

5 Q And I think what you told me at the Tech Session
6 is that when you were retained to do this work,
7 that's when you first read the statute and
8 rules; is that right?

9 A Yes.

10 Q Now, earlier Ms. Mackie was asking you
11 questions, and she asked about the kind of
12 things that you would have expected to see in
13 Mr. Raphael's visual assessment; do you recall
14 that?

15 A You might have to remind me of specifically what
16 that was.

17 Q Okay. I will. I want to go through a couple of
18 specific things.

19 To the extent that you would have expected
20 to see things in his assessment, that
21 expectation only would have come from the work
22 you did here on this Project in your first
23 reading of the rules for the Project; is that
24 fair to say?

1 A Yes.

2 Q So I want to go to Applicant's Exhibit 51 which
3 is Mr. Raphael's report, and I'm going to go to
4 PDF page 51, starting with the universe of
5 things that he reviewed. Okay.

6 So Mr. Raphael at a high level sort of
7 described the universe of the types of resources
8 that he considered. I assume this is familiar
9 to you?

10 A Yes.

11 Q And I assume when you say there are things you
12 would have expected him to look at, these are
13 all the types of things you would have expected
14 him to look at.

15 A Yes.

16 Q And Ms. Mackie asked you about a couple of
17 specific examples so I think she asked you about
18 trails, for example, and asked you whether you
19 would have expected him to look at trails and
20 you said yes.

21 A Um-hum.

22 Q And in fact, I want to call your attention to
23 PDF page 55, and I'm looking at number 95 on
24 that list which is the Sweet Trail. Do you see

1 that?

2 A Yes.

3 Q So, in fact, this is one example of Mr. Raphael
4 actually having looked at trails; is that right?

5 A Okay.

6 Q And would it surprise you that there are
7 actually other examples of him having considered
8 trails in his work?

9 A No, it wouldn't surprise me.

10 Q Another category that Ms. Mackie asks you about
11 was conserved plants. Do you recall that?

12 A Yes.

13 Q And I take you to PDF page 57, and I'm looking
14 at 147, and I think in particular she asked you
15 about Foss Farm. Do you recall that?

16 A Yes.

17 Q And in fact, that's another area that Mr.
18 Raphael actually considered; isn't that true?

19 A Yes.

20 Q And I think if you look at 142 through 159 here,
21 you would see that there were a whole range of
22 conservation lands that he actually considered
23 as part of his evaluation. Would you agree with
24 that?

1 A I would.

2 Q And another thing that Ms. Mackie asked you
3 about was the Durham Historic District. Do you
4 recall that?

5 A Yes.

6 Q And are you aware again that Mr. Raphael
7 actually did discuss resources in the Durham
8 Historic District?

9 A I don't remember specifically.

10 Q Let me take you to PDF page 51, and I'm looking
11 at number 2, the John Sullivan House. You're
12 aware that that is within the Durham Historic
13 District?

14 A Yes.

15 Q So he certainly considered that, right?

16 A Yes.

17 Q And let me ask you a couple more questions more
18 broadly about historic resources because Ms.
19 Mackie was asking you some wide-ranging
20 questions about that.

21 Let me pull up, Dawn, if we could, CFP
22 1-10.

23 MS. GAGNON: 261.

24 Q 261. So this is a new exhibit.

1 Counsel for the Public asked the Applicant
2 a Data Request which you now have on the screen
3 that asked the Applicant to describe the
4 collaborative efforts between the visual
5 assessor, LandWorks, and the historic
6 consultants to identify historic resources for
7 the VIA.

8 Did you have an opportunity to look at
9 these data responses?

10 A I did not.

11 Q I'm fairly certain that these were provided
12 before you did your report, and you didn't get a
13 chance to see them?

14 A I don't recall seeing anything having to do with
15 historic sites.

16 Q Okay. Was it your -- you can see the answer
17 here. Was it your understanding that LandWorks
18 did work collaboratively with the historic
19 experts in this case in order to identify and
20 consider historic resources for the Visual
21 Assessment?

22 A Was I aware that they did? I was not aware that
23 they worked with historic resource consultants.

24 Q Would you have expected him to do that? Do you

1 think that would have been a logical approach to
2 this work?

3 A Yes.

4 Q Let me call up, Dawn, CFP 1-7 if we could.

5 MS. GAGNON: 262.

6 Q This is Exhibit 262.

7 MR. FITZGERALD: Excuse me. Could you just
8 explain, who are these responses being from?

9 MR. NEEDLEMAN: Sure. So as part of the
10 discovery in the case, parties asked each other
11 written questions. These are written questions
12 that came from Counsel for the Public, so it's
13 designated CFP, to the Applicant which the
14 Applicant then had to answer in writing.

15 MR. FITZGERALD: So the responses here are
16 the Applicant's?

17 MR. NEEDLEMAN: Right. So the question is
18 from Counsel for the Public; the response is
19 from the Applicant.

20 MR. FITZGERALD: Thank you.

21 MR. NEEDLEMAN: And they would not be part
22 of the record, I believe, unless parties made
23 them part of the record.

24 BY MR. NEEDLEMAN:

1 Q So Counsel for the Public in this question asked
2 the Applicant to describe the efforts that were
3 made to identify historic sites for the Visual
4 Impact Assessment. And I'll ask you the same
5 question because maybe you might have seen some
6 of these but not others. Did you see this data
7 response to the best of your memory?

8 A I don't recall.

9 Q Okay.

10 A I don't recall seeing this.

11 Q Let me take you through some pieces of this.

12 So it says LandWorks identified resources
13 found on the national and state historic
14 registers using available sources like the NHDHR
15 resource. Do you see that?

16 A Um-hum.

17 Q Is that something would you have expected
18 LandWorks to do?

19 A Yes.

20 Q And then it says, "For those sites that are
21 eligible for listing, Preservation Company
22 provided LandWorks with the list of resources
23 that included setting as a defining feature."

24 Do you know who Preservation Company is?

1 A I don't.

2 Q Would it surprise you that Preservation Company
3 was one of the historic resource consultants
4 that worked on this Project for the Applicant?

5 A No. That wouldn't surprise me.

6 Q So knowing that, do you think that the work
7 described in this second sentence is something
8 that you would have expected to see in a Project
9 like this?

10 A Yes.

11 Q And then the last sentence says, "Preservation
12 Company assisted in identifying those sites
13 where the public has a legal right of access and
14 possess a scenic quality." Do you see that?

15 A Um-hum. Yes.

16 Q Now, is it your understanding that those
17 particular features, legal right of access and
18 scenic quality, would be important here in the
19 context of Visual Impact Assessment?

20 A Yes.

21 Q And am I correct that that's important because
22 in the first instance, a resource cannot be a
23 scenic resource under the rules unless the
24 public has a legal right of access?

1 A Yes.

2 Q Correct? And under the rules, a historic site
3 that's a scenic resource must possess a scenic
4 quality; is that correct?

5 A Yes.

6 Q Okay. So let me call up, Dawn, what's the next
7 exhibit number?

8 MS. GAGNON: 263.

9 Q 263. And focus on the top first, Dawn.

10 So this is, I believe, a list of state and
11 federal listed historic resources that were
12 considered during this Project. Is this
13 something you've seen before?

14 A Is this in Dave Raphael's report?

15 Q I honestly don't know. I think it was produced
16 in discovery, and that's why I'm not sure
17 whether you would have seen it.

18 A No. I don't believe I have seen this.

19 Q Okay.

20 A This specific.

21 Q Dawn, can you zoom out on this? And so I want
22 to call your attention, well, first of all,
23 again, is this the sort of document that you
24 would have expected to be produced as part of

1 this overall evaluation?

2 A Yes.

3 Q And can we go to page 2? In the middle of the
4 page, Dawn.

5 So we have a list here of some of the
6 resources that were considered on this list and
7 it includes, again, not only the Durham Historic
8 District but resources like Smith Chapel, is
9 that correct, which Ms. Mackie called to your
10 attention before?

11 A Yes.

12 DIR. MUZZEY: Could I please interrupt and
13 ask a question?

14 MR. NEEDLEMAN: Sure.

15 DIR. MUZZEY: Could you tell us the source
16 of this material? Is this new material that's
17 not been on the record yet or does this appear
18 elsewhere?

19 MR. NEEDLEMAN: It's not in the record yet.
20 I believe it was provided as part of the data
21 response at some point, and I'm introducing it
22 now in response to some of the things that were
23 said earlier. But it's part of the universe of
24 materials that were considered between LandWorks

1 and Preservation Company to do the work on this
2 Project.

3 DIR. MUZZEY: Is there a source of where
4 these lists are from or anything attached to
5 this exhibit?

6 MR. NEEDLEMAN: I can't tell you as I stand
7 here today where we got it, but I can check and
8 let you know. I do know that the Project
9 interacted with New Hampshire DHR.

10 DIR. MUZZEY: Yes, you had said that
11 before. I know. But I just wondered about
12 these particular materials, where they're coming
13 from and whether you were introducing new
14 material on the record.

15 MR. NEEDLEMAN: Well, yes, we're
16 introducing this as an exhibit, and I will check
17 about the exact source of this. I'm not sure of
18 it.

19 DIR. MUZZEY: Thank you.

20 BY MR. NEEDLEMAN:

21 Q So in your report at page 1 you talk about the
22 definition of scenic resources, is that right?

23 A Let me look.

24 Q You actually referred to 102.45 which is the

1 definition of scenic resource, correct?

2 A Yes.

3 Q And it includes in that list historic resources
4 that possess a scenic quality, correct?

5 A Yes.

6 Q And I think we talked about this earlier, but
7 just to be sure. You would agree with me that
8 if something is otherwise a scenic resource but
9 it's going to have no visibility of the Project,
10 it would be acceptable to screen it out. In
11 other words, if there's a scenic resource but
12 it's behind a hill and it can't see the project,
13 it can't be affected by the Project; is that
14 right?

15 A Yes. That's correct.

16 Q So when Ms. Mackie was asking you about what you
17 would have expected regarding visual review of
18 various types of resources including scenic
19 resources, for example, would you have expected
20 that such resources would have had to have
21 public access, scenic quality and visibility of
22 the Project?

23 A Yes.

24 Q Okay. And you would have expected sites like

1 that to be evaluated, correct?

2 A Evaluated -- I'm not sure what you're asking.

3 Q Well, if there were a hypothetical resource, it
4 was a historic resource, it had scenic quality,
5 it was publicly accessible and it had visibility
6 of the Project, you would have expected it to be
7 evaluated?

8 A Yes.

9 Q Okay. Now I want to go back to what you said
10 earlier about mitigation measures. I want to
11 look at your testimony on page 4, line 17 to 19,
12 and setting aside what we talked about earlier
13 regarding whether any of the 13 resources that
14 you identified were scenic or not, under the
15 rules, I want to focus on mitigation at these
16 sites.

17 A Okay.

18 Q So on page 4, line 17 to 19 of your testimony,
19 this is where you said that the Applicant missed
20 the opportunity for mitigation.

21 A Yes.

22 Q At the Tech Session, I think I was confused
23 about what you meant, and so I pointed you to
24 the Applicant's descriptions in the Application

1 at page 74 where we listed all of the visual
2 mitigation. Do you remember that? It included
3 things like co-location, selection of
4 structures, retention of vegetative buffers,
5 things like that. Do you remember that?

6 A Yes.

7 Q And I also pointed you to listings in Mr.
8 Raphael's testimony where he talked about these
9 issues; do you remember that?

10 A I do.

11 Q And it was at that point that you told me that
12 that's not what you were referring to in this
13 testimony. What you were referring to was
14 focusing on plantings. Is that right?

15 A Yes.

16 Q And so are you aware that in the Merrimack
17 Valley Reliability Project Eversource worked
18 very closely with property owners to put
19 plantings in place to address visual concerns
20 even where those were not scenic resources? Did
21 you know that?

22 A I didn't know that.

23 Q Is that the type of effort you would like to see
24 and expect to see in a Project like this?

1 A Yes.

2 Q And are you aware, have you had an opportunity
3 at all to look at the current version of the
4 Draft Memorandum of Understanding between UNH or
5 Durham and the Applicant?

6 A I have not.

7 Q Dawn, if I could call up Applicant's 197. This
8 is the Draft MOU, and I want to focus on Section
9 V (J.) Landscape Restoration. Have you had an
10 opportunity to look at this?

11 A I have not.

12 Q If you would just take a quick minute to read
13 it.

14 A Okay.

15 Q So if this became a condition of the
16 certificate, is this the sort of thing that you
17 would like to see the Applicant doing in terms
18 of visual mitigation?

19 A Yes.

20 Q And let me, I think it was earlier that you were
21 shown some of the proposed conditions that
22 Counsel for the Public and the Applicant
23 submitted in this Docket. Do you recall that?

24 A Yes.

1 Q So once we understood that your mitigation focus
2 was on plantings, at the Tech Session I think I
3 asked you if you'd be willing to work with the
4 Applicants to try to address this issue. Do you
5 remember that?

6 A Yes.

7 Q And you said you would.

8 A Yes.

9 Q And we did subsequent to the Tech Session; is
10 that right?

11 A That's correct.

12 Q And so the effort that we undertook included a
13 process for the landowners to ultimately have
14 input and say on any sort of plantings plans
15 that were developed; do you recall that?

16 A Yes.

17 Q And so I want to call up Applicant's 193 which
18 we had a chance to look at a little bit earlier.
19 I think Mr. Patch asked you questions about
20 this. And let's focus on Condition 32.

21 So this condition requires the Applicant to
22 develop planting plans for all of the 13
23 locations that you identified in your work; is
24 that right?

1 A Yes.

2 Q And the Applicant, it says has to "work in good
3 faith with the underlying landowners at each of
4 these locations," correct?

5 A Correct.

6 Q And that's because ultimately, it's up to the
7 underlying landowners, whatever we may want, to
8 determine whether they want these plantings; is
9 that right?

10 A Yes.

11 Q And you have the opportunity in all of these
12 plantings plans to review them and to comment on
13 them, correct?

14 A Yes.

15 Q And Dawn, if you could bring up Condition 33.
16 This is separate from the 13 locations, but this
17 is sort of a different version of what we saw
18 with UNH where, the Durham condition, where
19 aside from your 13 locations, the Applicant is
20 agreeing to work with all of these affected
21 landowners identified here; is that correct?
22 Landowners that might be effected by tree
23 trimming, tree clearing, construction of taller
24 structures, things like that?

1 A Yes.

2 Q And then Dawn, Applicant's Exhibit 194, if you
3 could, please.

4 And I think Mr. Patch showed this one to
5 you earlier. This an Amended Stipulated Facts
6 and Request for Findings, and I want to call
7 your attention to stipulation number 12.

8 All right. So take a moment to just look
9 at that, but my question to you is by the terms
10 of this, the first part of that paragraph,
11 compliance with the conditions that we just
12 looked at will mean, will be equivalent to what
13 we consider now to be reasonable visual
14 mitigation measures; is that right?

15 A Yes.

16 Q And it also says that if those conditions are
17 complied with, and if you scroll down a little
18 bit more, Dawn, it's an agreement that there
19 will not be a significant adverse visual effect
20 at these 13 sites where you originally had that
21 conclusion; is that correct?

22 A That's correct.

23 Q And again, it is subject to landowner approval;
24 is that right?

1 A Yes.

2 Q Okay. I think that's all I have. Thank you,
3 Mr. Lawrence.

4 A Thank you.

5 PRESIDING OFFICER WEATHERSBY: We'll now
6 take questions from the Committee members if you
7 have any. Mr. Fitzgerald?

8 MR. FITZGERALD: I always have questions.

9 **QUESTIONS BY MR. FITZGERALD:**

10 Q Good afternoon, Mike Fitzgerald, I'm with the
11 Air Resources Division of the State of New
12 Hampshire.

13 To follow up on that last line of
14 questioning that Mr. Needleman asked you, I just
15 wanted to be clear. In these stipulations so
16 when it says the Applicant will work with
17 Mr. Lawrence or the Applicant or material will
18 be provided to you for review, in that capacity,
19 are you always working for the Counsel for the
20 Public?

21 A I believe so.

22 Q You don't actually, you haven't been contracted
23 separately to work with the Applicant to plan
24 things.

1 A No.

2 Q So your role is strictly limited to assessing
3 the Counsel for the Public and responding to
4 Applicant's requests as part of your role, that
5 role?

6 A Um-hum. Yes.

7 Q Okay. I just wanted to be clear about that.

8 When I looked at your testimony, and I
9 picked up some of the same things that Mr.
10 Needleman was pointing out, that you talked
11 about the Applicant's rather overly complicated
12 and I would categorize it as sort of a numerical
13 methodology for winnowing out and evaluating
14 resources, and when I looked at your report,
15 you, under methodology, and I can't remember
16 whether it was your report or your testimony,
17 but I would just sort of characterize it as I
18 went out, I looked at all of these, I went along
19 the route myself and looked at all of these
20 sites, and then using the criteria in the SEC
21 rules, I made my independent evaluation. But
22 you criticized the Applicant's report as being
23 overly complicated. That seems to be sort of a,
24 almost an art versus science, and I noticed in

1 your testimony today you gave a lot of, you used
2 the word "imagination" a lot.

3 This seems to be a pretty diverse point of
4 view of how to approach these projects and how
5 to evaluate them. Am I characterizing that
6 wrong? And would you, are these two different
7 methods of characterization often used? Do you
8 find yourself in competition with a more
9 numerical method a lot?

10 A Not necessarily. I think if you read Dave
11 Raphael's report he starts in the beginning and
12 says that he has come up with his own way of
13 doing things based on the Bureau of Land
14 Management method, the highway, whatever the
15 National Highway Department is, but then he
16 hybridizes that as he's going along.

17 And my point is that when you come up with
18 a system, if you're the person who gets to put
19 the score in, as you notice, one of his
20 categories he categorizes, he gives points, 1,
21 2, 3, but another one he's able to give 9 points
22 for, you know, for a good quality. And it just
23 seems like sometimes when you average the
24 numbers, something might actually be, one of the

1 numbers might be a lot more important than
2 something else.

3 And so you, in my view, you paint the
4 picture that oh, because we've done it
5 numerically we come out with the right answer.
6 But the way you're designing, the way you're
7 doing the input of the numbers is affecting the
8 outcome. It probably should be a little bit of
9 both, you know.

10 And I know that early on I questioned how
11 he was evaluating Little Bay and how that all
12 worked into things because Little Bay didn't
13 make it into the next round of hey, we should
14 look more carefully at Little Bay and the
15 crossing. So that's what, and I, I really did
16 find it, I was kind of confused by the time I
17 got to the end of it. I was kind of scratching
18 my head and saying how did he get here again?

19 And I think to boil it all down, what we
20 try and do is we try and understand the context
21 of the environment and that can be fairly
22 complicated, but usually it can, it can boil
23 down to some fairly simple distillation of the
24 information. And then you say okay, here's the

1 context, here's the project, how do they
2 compare? Does this Project fit with this
3 environment? That's what you're trying to,
4 that's the bottom line.

5 So if mine comes across a little too
6 simplified I think it's because actually David
7 did a lot of the work up front. You know, he
8 had those long lists of all those places, and I
9 went and started visiting them, and I said you
10 know, I agree with this, I agree with this, I
11 agree with this. So I agreed with his sort of
12 his macro perspective of things, and I felt like
13 I was visiting it on a more of a micro level
14 because I agreed with the fact that you can't
15 see it from most of those places that are on
16 those lists.

17 Q So do you disagree with his methodology in
18 general or the way that it was applied here and
19 do you think that his methodology comports
20 accurately with the SEC criteria?

21 A I think it comports with it. I just wonder if
22 he got just a little bit, I don't think it has
23 to be quite as complicated as what he made it.
24 I guess that's what, my opinion of that.

1 **QUESTIONS BY DIR. WAY:**

2 Q Good afternoon. I'm wrestling a little bit with
3 that as well, and I think you've said it
4 probably a couple minutes ago that your approach
5 was simplified because Mr. Raphael had done some
6 of the leg work. And give me a sense, if Mr.
7 Raphael wasn't in the picture and this landed on
8 your desk, what would you do different?

9 A I probably, my own work, I mean, obviously, I
10 would have had to have done some of the work
11 that David did to understand all of these
12 different sites that are required to be looked
13 at because they, because of their designation.

14 But beyond that, I think I would have gone
15 around and said well, I can't see it from here
16 and here and here and here which is what I
17 discovered when I followed through on David's,
18 his long list of places. I visited a whole lot
19 of them and said yeah, I agree, I can't see it
20 from there. But then I said so where can I see
21 it from.

22 And then I started, then I started looking,
23 and I noted those places because to me they had,
24 they did have visual impact, and again, just

1 because they weren't on the defined list in my
2 mind didn't mean that they weren't important
3 public viewpoints. In fact --

4 Q So I just want to make sure what I get a sense
5 of if he wasn't in the picture.

6 A Yes.

7 Q Your approach short of what he's already done,
8 would you sort of end up using the same sort of
9 variations on a theme of numerical approach that
10 he did?

11 A No. I don't think I would have. I think I
12 would have simply gone to each of those places
13 and said I can see the Project from here or I
14 can't see the Project from here. If I can see
15 the project, what's the impact, and do I need to
16 do a photosimulation from here because I think I
17 can see it, but I'm not sure.

18 I mean, the work that he did with the
19 overall map, you do it through a GIS process of
20 analyzing the topography and what's hiding, you
21 know, what's screening the Project. I would
22 have done, I would have gone through that as
23 well.

24 BY MR. FITZGERALD:

1 Q So you disagree with Mr. Raphael's overall
2 conclusion regarding the Project? It seems to
3 me that your approach is to make more of a
4 holistic view and I know you may disagree with
5 certain areas and I want to get into that a
6 little bit, but do you disagree with his overall
7 conclusion regarding the Project?

8 A The only place I disagree was on the 13 specific
9 places.

10 Q Okay. I want to get to them. So with regard, I
11 think you were asked, especially by Ms. Mackie,
12 about the, some of the historic areas and so on.
13 And you were asked at one point, you know,
14 should the Durham Historic District be
15 considered, et cetera, and I think your answer
16 was yes, and is that based on just simply the
17 fact that it's, you know, that it's a Historic
18 District and as such it should just be sort of
19 naturally included or, you know -- it seemed to
20 me that you were saying that a number of the
21 sites should be evaluated or included just
22 because they were historic.

23 A Well, reading the rules, my understanding is
24 that that's, that they have to be included.

1 Q Okay.

2 A That that's your rule. That those have to be
3 included. And I thought, I thought for some
4 reason they had, that they had been missed on
5 that. I mean, ultimately the point in my mind
6 is is it visible from those places.

7 Q Yes.

8 A You know. That, of course, all the places that
9 are visible should be, should at least be
10 considered, and then if they fall under the
11 rules where they must be, then that kind of
12 gives them an extra level of importance.

13 Q So given the information that Mr. Needleman
14 prepared for or showed you today about how those
15 sites were included, they were evaluated, and
16 certain conclusions were reached about them,
17 does that make you feel more comfortable?

18 A Yes.

19 Q Okay. Because I think I'm sort of repeating one
20 of his questions, but I want to clearly
21 understand. I think that you seem to be saying
22 that, your report identified 13 specific sites,
23 but had you felt that there were a number of
24 sites that he had completely missed, is it safe

1 to say you would have included those also?

2 A Yes.

3 Q So the sites that you, you feel basically
4 comfortable with the work that he did except for
5 the 13 sites that you identified.

6 A Yes.

7 Q All of those sites were road crossings?

8 A All 13 of those sites?

9 Q Yes.

10 A No. The sites on the UNH campus were not road
11 crossings.

12 Q Okay. Does the, your testimony, I believe, and
13 I'm not sure of this, you can confirm for me,
14 was that before the decision to underground at
15 UNH on the campus and under the Main Street in
16 Durham? Was that part of the consideration at
17 that time?

18 A No. The line was undergrounded, the line had
19 been undergrounded at UNH before I started
20 working, but it had not been undergrounded near
21 the Frink Farm.

22 Q Okay. So your considerations with regard to the
23 UNH campus Main Street area and the crossing of
24 Main Street and so on, those are all with

1 respect to the way the Project is proposed now
2 to have a transition tower on either side and to
3 go under Main Street?

4 A Yes. The concern was the area where the
5 transmission lines are still transmission lines
6 towards the north, towards the Gables
7 Apartments, and then it does include a piece of
8 the underground which is in front of the
9 gymnasium at UNH, and just clearing that's
10 happening because of that. And then the
11 transmission lines are back up again as they
12 pass Gregg Hall, and that's south of that area.

13 Q Okay. So with regards to road crossings, is it,
14 were there any of those 13 sites where, when I
15 think of a road crossing, I think of I'm driving
16 along or biking or whatever, and I look to the
17 right or left of me and I see something for a
18 few seconds and then it's gone.

19 A Yes.

20 Q Were there any of the areas within those 13 that
21 were different than those? Where there were
22 long stretches where the view would be
23 significantly changed or whatever? Is it pretty
24 much just as you drive you go through a

1 crossing?

2 A Well, the Mill Road crossing is a, kind of an
3 elongated and looking to the north. If you're
4 coming, I guess it would be south and west on
5 Mill Road there, there's a deeper view, but, and
6 I think some of this is simply the change that's
7 happening that now the vegetation kind of, it
8 works its way out into the right-of-way and it
9 works its way back into the right-of-way.

10 So the right-of-way isn't terribly
11 noticeable, and I think the combination of the
12 widening of the right-of-way and from all of the
13 environmental drawings, the plans that I got,
14 they just show a straight line clearing at 100
15 feet.

16 So it's going to change the, it's going to
17 be a very rectangular blocky cut, very
18 hard-lined kind of cut. So I think for people
19 that go back and forth, I mean, some people are
20 going to be much more sensitive to it than other
21 people. I'm a landscape architect; I'm
22 sensitive to that, those kinds of things. So I
23 think that's the idea is for the people that are
24 sensitive, we're trying to ameliorate that with

1 the mitigation.

2 Q I think Mr. Raphael's report referred, I forget
3 the exact term, but it was something like the
4 average viewer.

5 A Yes.

6 Q Is that a concept that you're familiar with?

7 A Yes.

8 Q You just mentioned the sensitive viewer or
9 whatever.

10 A Yes.

11 Q So in these areas that are road crossings, would
12 you think that these would be something that the
13 average viewer would be impacted by?

14 A Well, we had this conversation before about
15 who's the average viewer, and some lawyer one
16 time told me well, Mike, you're the average
17 viewer because everybody's got a set of eyes,
18 and you're supposed to actually be able to
19 articulate what's going on.

20 So I think it's reasonable to add
21 mitigation at these points, but I'm not the
22 final judge. So that's my opinion.

23 Q Okay.

24 A Thank you.

1 Q I'd like to move on to concrete mattresses and
2 the Bay view issue a little bit, if I may.

3 A Okay.

4 Q Dawn, could you bring up Exhibit 133,
5 applicant's Exhibit 133, and go to page 66?
6 Numeric. Electronic page 66?

7 MS. GAGNON: 133?

8 Q 133, electronic page 66.

9 This is part of the HDD versus jet plow
10 trial run, and it's a section in the report that
11 shows the concrete mattresses or is a schematic,
12 I guess. And when you testified, the picture
13 that you were shown you said didn't necessarily
14 comport with what you had seen or what you had
15 envisioned, and you thought it might be more
16 after flat woven type.

17 A Yes.

18 Q Does this change, this picture here change
19 your --

20 A This looks like it's sort of like halfway in
21 between what I was imagining and what the photo
22 showed. I mean, it says it's an 8 by 20 by
23 9-inch deep so I'm counting across it. Eight.
24 So I think these are one foot, look like

1 one-foot squares.

2 Q Yes.

3 A Which the other one if I, looked like they were
4 more like longer brick shapes. So I guess I'd
5 say this is somewhere in between the two.

6 Q Dawn, could you go up to page 62 electronically?
7 Could you expand that picture?

8 So does that sort of go along with what you
9 remember visualizing or do you think that's
10 significantly different of the way that you had
11 visualized that?

12 A It's a little, I mean, it's different than what
13 I was visualizing. Again, I think at a
14 distance, the texture of this is going to be
15 less and less. I mean, this appears to be
16 fairly close to this. The photograph looks like
17 it's taken fairly close so I'm seeing the detail
18 of it.

19 Q Right.

20 A Yes.

21 Q Well, does this change your conclusion? You
22 seem to indicate that you agreed with Mr.
23 Raphael that the concrete mattresses when viewed
24 from the Bay would not have a significant

1 impact, and I think the way you characterized it
2 was it was in the context of the overall view of
3 the shoreline because there's structures there
4 and so on. I think, I believe, does that sound
5 familiar?

6 A Yes.

7 Q Okay.

8 A Yes. It doesn't change my, it doesn't change --
9 I still agree that it's not going to be a
10 significant visual impact.

11 Q Okay. Good.

12 QUESTIONS BY DIR. WAY:

13 Q That point was making me wonder as we were, as
14 we started out as well, is that you seem to have
15 an impression of what the concrete mattresses
16 were and I was going to ask if you had been
17 present at the Construction Panel when we had
18 talked about mattresses that I think originally
19 all, a lot of us thought they were going to be a
20 flat, you know, cover.

21 A Yes.

22 Q But instead, I always remember the word biscuits
23 that were connected and articulating. And I
24 guess I'm just, whether it will impact or not

1 impact. How would you be able to say just from
2 looking at that, I mean, isn't it more to the
3 point that what you saw originally is just
4 completely different than what is being
5 proposed? Or can you look at this and then say,
6 and the other picture, and then say yes if I, if
7 I put that and what I thought before I can still
8 make the same judgment. It's pretty subjective
9 isn't it, at this point?

10 A Well, I think the fact that I believe that the
11 photosimulation was described to be taken at a
12 distance of a couple thousand feet that, again,
13 I can see the articulation in this photograph
14 because I'm maybe 150 feet from it or 200 or
15 something. I mean, that's what I'm just taking
16 my best guess at what that is.

17 Q Sure.

18 A But if those are one-foot squares, at a couple
19 thousand feet I think they're all, they're going
20 to lose their articulation. It's just going to
21 be a color over there.

22 Q Okay. All right. Thank you.

23 QUESTIONS BY MR. FITZGERALD:

24 Q Following up on that, I think Mr. Raphael

1 testified that when he was evaluating the Bay as
2 a scenic resource, you look from the Bay to the
3 Project. And so if you were doing that same
4 evaluation, he seemed to indicate, well, the
5 middle of the Bay is a pretty good place to make
6 that evaluation from.

7 A Yes.

8 Q Would you have disagreed with that?

9 A No. I don't think so. I know that when I was
10 doing site visits, I found a couple spots on the
11 other side of the Bay to take a look as well,
12 and I think it's, you know, it's best to move in
13 closer. I think halfway across is pretty
14 reasonable.

15 Q Okay. Good. And at one point you were shown
16 part of the proposed stipulation between the
17 Counsel for the Public and the Applicant and the
18 stipulation had language in it which said
19 something to the effect that you should be given
20 the opportunity to review and comment on
21 proposed plans for plantings and mitigation and
22 so on, and there was questions about your
23 authority.

24 Would you be more comfortable if there were

1 language in there saying something to the effect
2 that the Applicant shall take due consideration
3 of your comments or something like that? You
4 know, I don't, if you review and comment, that's
5 it and take it or leave it, but have you had any
6 familiarity with these types of agreement and
7 this role before? Has there been anything that
8 would make you work comfortable with the ability
9 to implement change?

10 A Well, my understanding is that ultimately this
11 has to be okayed by the landowner so I really
12 don't know if there's a way of doing that. I
13 mean, I do a lot of things on good faith, and I
14 don't know exactly how airtight this really can
15 be here.

16 Q Okay.

17 PRESIDING OFFICER WEATHERSBY: Can I ask a
18 question along the same vein? As I had the same
19 observation when we were discussing earlier was,
20 may lack a little bit of teeth. Would it be
21 appropriate in your opinion to have you approve
22 the plan?

23 MR. FITZGERALD: That's where I was going.

24 PRESIDING OFFICER WEATHERSBY: Before it

1 moves on to the, basically you get to sign off.

2 A Yes.

3 PRESIDING OFFICER WEATHERSBY: That it
4 meets your --

5 A I'd be fine with that.

6 PRESIDING OFFICER WEATHERSBY: Okay. Thank
7 you.

8 MR. FITZGERALD: Can I ask Mr. Aslin a
9 question about that.

10 PRESIDING OFFICER WEATHERSBY: Sure.

11 MR. FITZGERALD: I'm sorry. I refer to you
12 all as Mister, and it should be attorney. Do a
13 global change from mister to attorney for me.

14 Do you see a role, obviously you envision a
15 role for Mr. Lawrence in looking at these plans,
16 providing comment and so on. The way the
17 language is written right now, do you see a role
18 where you can say Mr. Lawrence has said this
19 won't work, I want you to do something else. Or
20 do you think that would need to be strengthened
21 somewhat?

22 MR. ASLIN: Well, I think as Mr. Lawrence
23 pointed out, regardless of what Mr. Lawrence or
24 Counsel for the Public thinks, it's ultimately

1 something that the landowner has to agree to.

2 MR. FITZGERALD: Understood.

3 MR. ASLIN: We could never compel a
4 particular outcome. And the interaction is
5 really between the Applicant and the landowner,
6 not between Counsel for the Public and the
7 landowner. So, sure, Mr. Lawrence could have
8 some sort of veto power, I suppose, but I don't
9 think he could give Counsel for the Public or
10 Mr. Lawrence the authority to compel particular
11 plantings or particular mitigation on a
12 site-by-site basis.

13 MR. FITZGERALD: But as Counsel for the
14 Public, are you in this case looking at the
15 interest of the landowner?

16 MR. ASLIN: Not on an individual basis, no.
17 It's looking at the Project as a whole from the
18 public's perspective. So we can't represent --
19 in that kind of an engagement, it wouldn't be
20 that we were trying to maximize the benefit for
21 that individual landowner. The Counsel for the
22 Public is looking at whether the mitigation is
23 adequate for the Project in the landscape as a
24 whole.

1 MR. FITZGERALD: But could something, and
2 I'm not suggesting veto power or whatever, but
3 my thought was something like the Applicant
4 shall take due consideration or whatever, some
5 type of language there that indicates that they
6 would make their best efforts to address his
7 comments. Could that be in the process before,
8 you know, so that when the Applicant works with
9 the landowner and says this is what we proposed,
10 the landowner may say no or yes or whatever, but
11 if there was something that were available to
12 CFP and the Applicant that was proposed to the
13 landowner, is that, does that seem like a
14 reasonable approach?

15 MR. ASLIN: If I understand what you're
16 saying, sure. I mean, my view of this process
17 would be a somewhat collaborative one between
18 the Applicant and Counsel for the Public
19 reviewing proposals, and ultimately the
20 landowner has the final say because it's their
21 land. A due consideration clause would be
22 acceptable to Counsel for the Public. I think
23 it's implied in the discussions we've had with
24 the Applicant, but I agree it's not spelled out

1 in the language.

2 MR. FITZGERALD: Well, subject to the
3 approval of the landowner, setting that aside
4 for a moment, do you feel that the language
5 that's there now, that you can negotiate with
6 the Applicant and say my consultant has said
7 this mitigation plan doesn't work for this
8 reason and I want you to change it, knowing that
9 the landowner may or may not accept that later?
10 Do you feel comfortable right now?

11 MR. ASLIN: I'm not sure that that's the
12 role of Counsel for the Public on an individual
13 basis to say we think the planting plan should
14 look like this. Rather to give feedback to see
15 whether we think it's meeting the appropriate
16 level of mitigation and really to offer an
17 independent view of what type of mitigation
18 might be proposed. I'm wary of being in a
19 position of advocating for individual locations.

20 MR. FITZGERALD: I guess I'm trying to
21 understand what the purpose then is of having
22 him review and comments on these?

23 MR. ASLIN: I think the primary purpose is
24 to give an independent review of options that

1 could be proposed to landowners and to give a
2 little bit of an outside sense of this isn't
3 just the Applicant engaging directly with the
4 landowners one-on-one, but that there's an
5 independent third party look at it to say yeah,
6 that's reasonable or hear some other ideas.

7 MR. FITZGERALD: Looks like Attorney
8 Needleman has a contribution.

9 MR. NEEDLEMAN: If I may, I was going to
10 say two things. One, I agree with what Chris
11 said that I think the concern here you're trying
12 to get at is implied here, and I think maybe
13 it's even more than implied because both
14 Conditions 32 and 33 specifically say that the
15 Applicant's got to work in good faith with the
16 landowners, and so I think that would imply that
17 they're going to make best efforts and not
18 simply ignore suggestions.

19 MR. FITZGERALD: But do they have to work
20 in good faith -- I don't want to imply they
21 wouldn't be in good faith, but do they have to
22 work with CFP and Mr. Lawrence. You know, do
23 you have to take into consideration his
24 comments. I'm not suggesting you wouldn't.

1 MR. NEEDLEMAN: Sure. I would say two
2 things about that. Certainly I would think that
3 that's what it requires and I would also say I
4 think, and Mr. Lawrence can speak to this or
5 Chris can, I think the course of dealing we've
6 already had reflects those types of dealings.

7 MR. FITZGERALD: Okay.

8 QUESTIONS BY DIR. MUZZEY:

9 Q I have one more question along those lines.
10 Looking at Applicant's Exhibit 194, there's a
11 replacement for Condition number 12, and unless
12 Dawn wanted to get that up on the screen, I'll
13 just read the first sentence of that.

14 The parties agree that the Applicant's
15 commitments to developing vegetative planting
16 plans will, as described in Eversource and
17 Counsel for the Public's Stipulated Proposed
18 Conditions of Approval 32 and 33 -- which we're
19 talking about -- result in reasonable visual
20 mitigation measures.

21 And the use of "reasonable" here is new.
22 It doesn't appear in 32 and 33. So I'm
23 wondering, Mr. Lawrence, do you have an idea of
24 what they're talking about when they say

1 reasonable there, and do you know who determines
2 reasonableness?

3 A I would guess that if Mr. Raphael and I were the
4 two people kind of talking about the actual
5 plants, and I think we could come to an
6 understanding as to what is reasonable. I think
7 in my mind I do. I know what reasonable is,
8 what reasonable there would be. I think we did
9 take a look at one of the crossings and some
10 ideas have gone back and forth and I think we,
11 you know, we came to an agreement on that. And
12 there's a little, there was some conversations
13 about what's a reasonably large size to plant
14 something right now so that it's going to have
15 impact right away. So I think we've had a
16 meeting of the minds on that.

17 Q I thought in this case reasonable would mean
18 something very different than that.

19 A Okay.

20 Q So I find it sort of a relative term and I'm
21 wondering if there might be a more appropriate
22 word than the use of reasonable in that
23 stipulation. But thank you. Go back to you.

24 QUESTIONS BY MR. FITZGERALD:

1 Q Just a couple more.

2 A Okay.

3 Q With regards to mitigation, particularly
4 plantings and so on, I think it's pretty clear
5 that when you have a 75-foot tower and you have
6 65-foot trees, the tower is visible over the
7 trees, but is mitigation of plantings and that
8 sort of thing, do they necessarily have to be 75
9 feet or I think, I heard you refer at one point
10 to them as distractions or whatever, but you
11 know, I drive around at night and sometimes I
12 can see the moon and sometimes I can't. You
13 know. So I mean, can plantings and other things
14 be set in such a way so that they block the
15 visibility even though they're not necessarily
16 as tall as?

17 A Yes. Sure. I mean the, planting something up
18 close, I mean, it could be six feet. If my
19 eye's at five and it's six, I can't see beyond
20 it.

21 Q Right.

22 A I think the challenge with the corridor is you
23 see a lot of it, and you can't plant things that
24 are going to get above a certain height.

1 Ideally, you want to get large scale plant
2 material around these big transmission towers
3 and that will be most effective, but even
4 smaller things as long as they're close to you
5 will help. And oftentimes, it isn't that you
6 see it, that you see it, but if you can see it
7 through a small slot or several small slots
8 that's a whole lot preferable than a wide open,
9 you know, wide open view.

10 Q And the overall SEC statute in terms of issuing
11 approval has the criteria that the site and
12 facility will not have an unreasonable adverse
13 effect on aesthetics, other criteria as well,
14 but this conversation about reasonable, would
15 you say that overall this Project would rise to
16 the level of unreasonable effect on aesthetics,
17 the overall Project?

18 A I think there are certain places that, where you
19 go by it, if no mitigation was done, I would say
20 in some places it would be unreasonable. I
21 guess the big question is do these add up to the
22 overall. You know, in other words, in many
23 places it has no effect and no visual impact,
24 you know, when it's running back through wooded

1 areas and there's nobody back there. You just
2 have to weigh it all out.

3 So my sense would be if this mitigation
4 were done then you could claim that it does not
5 have an unreasonable undue adverse impact,
6 visual impact.

7 Q So would it be your opinion then that if the
8 Project has an unreasonable impact that is not
9 mitigated in one place that it's the entire,
10 that that would negate the entire Project? I
11 haven't been on these proceedings before so
12 maybe this situation has been dealt with before,
13 but I need to -- in your experience, you know,
14 can one or two particular areas have such an
15 effect that it would make it unreasonable?

16 A Well, I'm going to go hypothetical now. I think
17 it would be possible.

18 Q I started hypothetical. Yes.

19 A I think it would be possible. Yes.

20 Q Okay. Thank you.

21 A You're welcome.

22 PRESIDING OFFICER WEATHERSBY: Director
23 Muzzey?

24 DIR. MUZZEY: Thank you.

1 **QUESTIONS BY DIR. MUZZEY:**

2 Q In your work as a landscape architect, have you
3 worked at historic properties before?

4 A Yes.

5 Q So thinking of the historic properties,
6 individual properties, Historic Districts
7 throughout this Project area, and the idea of
8 providing some sort of screening, do you think
9 that, how do you think the historical attributes
10 of those resources should be considered in
11 designing the screening?

12 A Well, I guess because I immediately go to the
13 Frink Farm, and I'm, as I said, I was delighted
14 that that, I think someone has to kind of figure
15 out exactly what the value of the historic site
16 is and then what the impact of this Project is.
17 And of course it could ruin the quality. I
18 mean, a Project that's completely out of scale
19 with a historic property could ruin its value.

20 So as I said, I'm very gratified that what
21 was a 30-foot high series of poles across the
22 hay field at the Frink Farm is now not going to
23 be there anymore. So I think that's actually an
24 improvement, and I understand that there is

1 going to be a large pole, but it's back at the
2 back of that area. So I mean, I guess I commend
3 the Applicant on that.

4 And I think that each one of those areas
5 has to be evaluated, you know, where is this
6 Project in proximity to that historic site. If
7 it's a mile away, something very different is
8 the solution to right up close and personal. So
9 I think you have to take every one individually,
10 and mitigation is probably going to be different
11 in every case as well. And in some cases it's
12 unreasonable and the project shouldn't be built.

13 Q Well, thinking of the actual addition of
14 screening of some sort, thinking of perhaps the
15 Frink Farm where the historic nature of that
16 property is an open field?

17 A Yes.

18 Q And so if a large amount of screening was added
19 to what was historically a hay field, is it part
20 of your thought process to determine whether or
21 not that would be actually adverse to the
22 historic setting of the farm or do you think,
23 the State Historic Preservation Office has
24 reviewed the Project should review of the

1 landscaping plan also be part of the State
2 Historic Preservation Office's duties there?

3 A Well, the mitigation plan that, the landscape
4 plan that we've talked back and forth about
5 there is simply to fill in the hedgerow that
6 runs along the road, but that's at the
7 underground crossing of the road, further north
8 of the Frink Farm.

9 So as I say, in that case, there's an
10 improvement so there is no other landscaping
11 required, but I think what I'm hearing you ask
12 is could landscaping get in the way. Could it
13 be, could it be sort of opposed to the character
14 and the history of a place.

15 Q Yes.

16 A And it could be. It could be. And I think that
17 there's a little, there could be a tug-of-war
18 around that. In some cases you might say well,
19 we have to give that up, but we're achieving
20 this.

21 Q Thank you.

22 A You're welcome.

23 Q So looking at Applicant's Exhibit 51, which is
24 Mr. Raphael's assessment report, electronic page

1 51 begins his list of scenic resources within
2 the area of greatest potential visual impact.
3 In your work for this project, did you review
4 that list and double-check what was on it
5 outside -- I know you also came up with 13
6 additional locations, but just for the list as
7 presented, did you double-check those to make
8 sure it was accurate?

9 A If that's the list I'm thinking of, I believe I
10 visited each of those sites that that list
11 symbolizes.

12 Q Yes. But did you check to see whether he missed
13 anything? Did you do an independent overall
14 check of the Project area?

15 A I did not.

16 Q Okay. That wasn't within your scope of work.

17 A I think I visited some of the other spots, but
18 without having the list in front of me, I'm not
19 sure.

20 Q Would you mind, Dawn, putting that up? It's
21 Applicant Exhibit 51 and the list begins on
22 electronic page 51, and this is long list so it
23 goes on for a number of pages.

24 A These are the historic resources.

1 Q I'm looking at the list in its entirety. It
2 goes on for pages until page 59. So my question
3 is did you start from zero and come up with your
4 list of scenic resources or did you, were you
5 working, was it within your scope to work off of
6 this list?

7 A That's the list I worked off of. Yes. I didn't
8 develop an additional list.

9 Q An independent list. Thank you. That's all I
10 have. Thank you.

11 A Thank you.

12 PRESIDING OFFICER WEATHERSBY: Any other
13 Committee members have questions for
14 Mr. Lawrence? Attorney Dore. Do you have any
15 questions?

16 MS. DORE: No.

17 PRESIDING OFFICER WEATHERSBY: Okay. Thank
18 you, Mr. Lawrence, for your testimony today.

19 A Thank you.

20 PRESIDING OFFICER WEATHERSBY: Appreciate
21 it. You may step down. Oh, I'm sorry.
22 Redirect.

23 MR. ASLIN: I just had a couple questions.

24 **REDIRECT EXAMINATION**

1 **BY MR. ASLIN:**

2 Q Good afternoon, Mr. Lawrence, just a couple
3 quick questions. You were asked earlier about,
4 I think Attorney Needleman was getting at the
5 different criteria for historic sites to be
6 included in an aesthetics review, and he used
7 three; one being public access, one being scenic
8 quality, and the third being visibility. Do you
9 recall that?

10 A Yes.

11 Q Okay. And I just wanted to clarify. What's
12 your understanding of how you would determine
13 those three components; scenic quality,
14 visibility and public access?

15 A By having a survey, the GIS generated here's the
16 Project in the computer model, here's the
17 viewshed. That would tell you area of
18 visibility.

19 And then the scenic piece, I would be
20 looking at landscape contrast. I'm trying to
21 think. Focal points. The intactness of the
22 area. Spacial quality. And sort of an order
23 and harmony. I'd be looking at that in the
24 context of the landscape. And as I was

1 reflecting on that, I mean that's kind of where
2 I would be scoring the low, medium, high. It
3 has, you know, contributes a high level of
4 intactness or whatever. And I would come to the
5 conclusion that this is scenic here.

6 Q So you'd have to do some level of assessment
7 even to determine whether it is a historic site
8 with scenic quality.

9 A Yes.

10 Q Okay. Thank you. You also were asked some
11 questions about the definition of, well, I'm not
12 sure you were asked about the definition per se,
13 but you were asked about key observation points
14 and whether the ones that you identified along
15 various road crossings qualified or were
16 required to be reviewed under the rules, and I
17 just wanted to put up the rule.

18 Do you see there Site 102.25 at the top?

19 A Yes.

20 Q And the definition of key observation point?

21 A Yes.

22 Q Based on that definition, is it your
23 understanding that key observation points need
24 to be scenic resources?

1 A I don't think they necessarily have to be scenic
2 resources.

3 Q Thank you. I have nothing further.

4 PRESIDING OFFICER WEATHERSBY: Thank you.
5 Now you may finally step down. Thank you for
6 your testimony.

7 A Thank you.

8 PRESIDING OFFICER WEATHERSBY: Why don't we
9 take a ten-minute break, back at 3:10 when
10 Mr. Frizzell will take the stand. Thank you.

11 (Recess taken 2:58 - 3:12 p.m.)

12 PRESIDING OFFICER WEATHERSBY: Okay.
13 Welcome, Mr. Frizzell. If he could be sworn in,
14 please.

15 (Whereupon, **Keith Frizzell** was
16 duly sworn by the Court Reporter.)

17 **KEITH FRIZZELL, SWORN**

18 PRESIDING OFFICER WEATHERSBY: Attorney
19 Lanzetta.

20 MR. LANZETTA: Thank you.

21 **DIRECT EXAMINATION**

22 **BY MR. LANZETTA:**

23 Q Good afternoon. Mr. Frizzell, can you just
24 state your name and address for the record,

1 please?

2 A Yes. Keith Frizzell. 24 Fox Point Road,
3 Newington, New Hampshire.

4 Q Thank you. We submitted your Prefiled Testimony
5 as an Exhibit marked KF 1. Do you have that in
6 front of you today?

7 A I do.

8 Q Do you have any changes or revisions to your
9 testimony?

10 A I do not.

11 Q Okay. Thank you very much.

12 PRESIDING OFFICER WEATHERSBY: Attorney
13 Lanzetta, could you have him adopt his
14 testimony, swear to it and adopt his testimony?

15 MR. LANZETTA: Sure.

16 Q Mr. Frizzell, do you adopt your testimony as
17 truthful?

18 A I do.

19 PRESIDING OFFICER WEATHERSBY: Okay. Thank
20 you.

21 First examiner will be Attorney Patch for
22 Town of Durham.

23 MR. PATCH: No questions.

24 PRESIDING OFFICER WEATHERSBY: Town of

1 Newington? Attorney Geiger?

2 **CROSS-EXAMINATION**

3 **BY MS. GEIGER:**

4 Q Good afternoon, Mr. Frizzell. For the record,
5 I'm Susan Geiger, and I represent the Town of
6 Newington, and I have a few questions for you.

7 I'd like to show you what's been marked as
8 Applicant's Exhibit 84 which is a map, it's map
9 23 of 28. Can you see that?

10 A Yes. I can.

11 Q Does this show a map of your property?

12 A Part of my property. Yes.

13 Q Okay. Now, on this map -- I'll try to stay near
14 the microphone but I'm going to have to point so
15 bear with me. If you can't hear me, let me
16 know.

17 MR. FITZGERALD: Could you generally
18 identify where the property is on that map?

19 MS. GEIGER: That's what I was about to do.
20 I was going to try to assist the witness, but if
21 you'd rather have the witness to do it himself,
22 I'm happy to have him approach. I'll try to do
23 it from here.

24 MR. FITZGERALD: Okay.

1 Q Mr. Frizzell, I have my pen pointing to an area
2 just above where the narrative language begins
3 on this or the legend begins on this map. Is
4 that where your house is located?

5 A Yes. That's my home.

6 Q And I'm going to move my pen to the left-hand
7 side of this document where there's some yellow
8 hashtags. Are those yellow hashtags represent
9 of Historic District?

10 A I do not know.

11 Q Well, subject to check, I believe if you look at
12 the bottom of the map on the legend you'll see
13 that there is a designation that yellow hashtags
14 do represent Historic Districts.

15 A Yes. I see that.

16 Q We've established the location of your home on
17 this map. Could you please tell the Committee
18 approximately how far your house is from the
19 edge of the right-of-way where the proposed
20 project is to be located?

21 A I have not taken a physical measure.

22 My estimation is 4 to 500 feet.

23 Q Mr. Frizzell, I'm going to start, starting in
24 the lower right-hand corner of the map, does the

1 shaded area as I proceed sort of, I think this
2 is a westerly direction? Let's just say I'm
3 going up on the map. Does that show the
4 location of the transmission corridor?

5 A Yes.

6 Q Transmission line corridor, I should say. And
7 again, if we head from right to left on this
8 map, does that also depict the proposed location
9 for the high voltage overhead transmission line
10 that is the subject of this docket?

11 A Yes.

12 Q So is it fair to say that your property will be
13 bounded on two sides by this Project?

14 A Yes.

15 Q And do you know whether you'll have a view of
16 the overhead transmission lines from your home?

17 A I will have a view particularly across the
18 longer section of transmission line. There is
19 views of the existing poles now, and larger
20 poles will be more in view.

21 Q And do you believe that burial of the overhead
22 transmission line, what is proposed to be an
23 overhead line in the location shown on this map,
24 is an appropriate strategy for mitigating any

1 visual impacts that the line might have on your
2 property?

3 A I do. I think it would be very helpful.

4 Q Would you be willing to grant Eversource the
5 right to bury the transmission line in the
6 easement running around your property?

7 A Yes, I would.

8 Q Have you discussed with Eversource the
9 possibility of burying the high voltage
10 transmission line in the area around your house?

11 A Yes. I've met with Eversource numerous times on
12 the property, and many of those times I have
13 mentioned to them that burial I thought would be
14 the best scenario. And I also proposed them
15 that I would even dig the ditch at no cost to
16 them if they would lay the line underground.

17 Q And what was Eversource's response to your
18 offer?

19 A The response was that they could not do that.

20 Q Do you know why?

21 A They did not elaborate.

22 Q Okay. Now, your Prefiled Testimony on page 2,
23 line 1, says that your house was built in 2005.
24 Is that correct?

1 A That is correct.

2 Q And when your house was built, was an overhead
3 electric line installed to bring electricity
4 from the distribution system to your home?

5 A It was not brought overhead. It was put
6 underground to my home from the street.

7 Q And why was the line put underground to your
8 home?

9 A Well, I knew aesthetically that it would be much
10 better to have the line underground. I felt it
11 would provide both tangible and intangible
12 benefits to doing that over the long-term, and
13 so I made the decision to put that underground
14 and bear the cost of that.

15 Q So was there an additional cost of burying that
16 line as opposed to running an overhead
17 distribution line to your home?

18 A Yes, there was. The amount of the cost I do not
19 know, but it was definitely more expensive to
20 proceed with that.

21 Q So is it fair to say that you don't have a
22 distribution line running overhead to your
23 house, but if this project is built, you'll have
24 a high voltage transmission line on two sides of

1 your property?

2 A That is correct.

3 Q Thank you. I don't have any further questions.

4 PRESIDING OFFICER WEATHERSBY: I don't see
5 anywhere here for the Conservation Law
6 Foundation; is that correct?

7 (No verbal response)

8 PRESIDING OFFICER WEATHERSBY: Durham
9 Residents?

10 MR. FITCH: We have no questions.

11 PRESIDING OFFICER WEATHERSBY: Counsel for
12 the Public.

13 **CROSS-EXAMINATION**

14 **BY MS. NICEWICZ:**

15 Q Good afternoon. My name is Lindsey Nicewicz. I
16 represent Counsel for the Public. I just have a
17 few questions.

18 So you mentioned that you had some
19 communication with Eversource. Are you aware
20 that Eversource has a claims process once the
21 line is built?

22 A I am not. I was not aware of that.

23 Q Okay. In your Prefiled Testimony, you say that
24 some adverse environmental effects would

1 inevitably occur. Could you just specify your
2 environmental concerns?

3 A Sure. My concerns are that the size of the
4 transmission poles that are going to be
5 installed with wetlands being on my property
6 that inevitably they have to build some type of
7 footing or base for the poles and that that's a
8 nonpervious material. What size and scope, I
9 don't know what's required for a pole that's 75
10 to 90 feet tall, but certainly that would
11 provide some impact on the soils.

12 Q Okay. And somewhat related, you also stated
13 that there would be adverse effects to the
14 aesthetics of the property. I know that you
15 mentioned this a little bit before, but could
16 you specify a little bit more, please, as well?

17 A Sure. My driveway, if you, if it's possible to
18 call back up that map, is that possible?

19 Okay. You can see my driveway that
20 meanders through the edge of my field, the field
21 that the major portion of the transmission lines
22 go through. If you know, if you look out at Fox
23 Point Road and see the driveway coming in from
24 the road. Yes, that's correct. It's the white

1 line. That goes through the field that has the
2 majority of the transmission line that goes
3 through my property.

4 The views now consist of a much smaller
5 transmission line. Under the current plan, my
6 property, I believe, is unique in Newington in
7 that the existing transmission line is going to
8 maintain, be there, meaning the proposed
9 transmission line is going to be established
10 beside my line so I'm going to have dual poles
11 running across my field now. It's almost
12 impossible to not have them as a visual impact
13 as you look across my field as you drive into my
14 house or exit from my house back out to Fox
15 Point Road. The existing pole is somewhere in
16 the neighborhood of I think I've been told 30 or
17 35 feet tall. There's going to be an additional
18 pole of in the neighborhood of 75 to 90 feet
19 tall at two locations in my field.

20 From a visual standpoint you just, you
21 can't avoid that even with landscape mitigation,
22 the scale and the scope of that, unless you
23 built an entire wall along my driveway of
24 vegetation, my opinion is that it can't be

1 avoided.

2 Q Okay. And have you had an independent property
3 evaluation done that estimates the effects of
4 the Project?

5 A In the terms of value?

6 Q Yes.

7 A I have not.

8 Q Okay. That's it. Thank you.

9 PRESIDING OFFICER WEATHERSBY: The
10 Applicant will now cross-examine.

11 **CROSS-EXAMINATION**

12 **BY MR. DUMVILLE:**

13 Q Good afternoon, Mr. Frizzell. Adam Dumville.
14 We've met before and I represent the Applicant.

15 Dawn, could you please pull up Applicant's
16 Exhibit 258, please?

17 And Mr. Frizzell, this is a summary of the
18 contact history that the Applicant has had with
19 you. As you can see from the list, it appears
20 that we've been, the Applicant has been reaching
21 out to you since at least 2013 with a field work
22 survey letter as well as a prior communications
23 dating back in 2015. Does that seem accurate to
24 you?

1 A Yes. It seems accurate.

2 Q And by the review of this list, it looks like
3 we've had numerous emails and letters and site
4 visits with you over the course of the last two
5 or three years?

6 A Yes. That's correct.

7 Q Okay. And in 2016, it's my understanding that
8 members of the project team met with you about
9 working with you to move structures on your
10 property; does that sound familiar?

11 A Yes, it does.

12 Q And the Project team as a result of the
13 conversations with you were able to remove one
14 transmission and one distribution structure from
15 the proposed project; does that sound right?

16 A Yes, there were a number of options proposed to
17 me. One of them was to remove, extend the span
18 between two structures in order to remove a
19 structure.

20 Q Right. And those were based upon some of your
21 input that was provided to the Applicant, right?

22 A Correct.

23 Q And based upon the conversations that we had, we
24 were able to also offer the specific location of

1 the pole locations by moving them a certain
2 distance either way within the right-of-way, and
3 you confirmed that the current location of the
4 poles is your preference; is that right?

5 A Well, the ability to move the poles was ten feet
6 in either direction as a set. The two sets of
7 poles that are being proposed on the property,
8 they would have to be moved in conjunction of a
9 maximum of ten feet in either direction. On the
10 scale and the scope of my field and those
11 structures, a ten-foot move is fairly
12 inconsequential so where they were proposing
13 them to be is adequate, you know, for the
14 current time.

15 Q So it was adequate at this time?

16 A Yes.

17 Q Okay. Thank you. I believe that the Applicant
18 has been working with you over the past few
19 months at least to agree upon a planting plan or
20 vegetation screening plan for your property;
21 does that sound right?

22 A Well, yes. At the last time we met here, I was
23 asked the question about it if I'd done any type
24 of other studies. I don't remember the exact

1 questioning, but it came out that I had hired a
2 landscape architect to see about minimizing the
3 impact of these structures should this Project
4 go through. And as a result of me providing
5 that copy they've reached, people from
6 Eversource reached out to me and met on-site to
7 go over what I was planning to plant and have
8 asked to participate in that.

9 Q And the Applicant is currently working with you
10 to finalize and reach an agreement on the plan,
11 is that fair?

12 A It is. I did not approach Eversource.
13 Eversource approached me in terms of potentially
14 cost-sharing with the exchange of being able to
15 have a say into what I was planting where and
16 the heights and things like that.

17 Q And all that is still under negotiation at this
18 point?

19 A It is.

20 Q Okay. You've also expressed interest in
21 constructing a livestock fence within the
22 Eversource easement; is that correct?

23 A That is correct. It was independent of what's
24 going on with this Project. It was not a result

1 of this Project. It was something that was
2 completely independent. But yes, I'm looking to
3 expand some existing livestock fencing into that
4 large field and those fences would have to cross
5 the easement. So I've been working with
6 Eversource in order to facilitate the access
7 that's necessary for maintenance on any type of
8 structures.

9 Q And there's currently been negotiations back and
10 forth between the Applicant on the development
11 of what's called a Joint Use Agreement. Does
12 that sound right?

13 A Yes. I haven't seen it. It's just been
14 mentioned occasionally that that's, my
15 understanding is that's what's needed in order
16 to put livestock fencing across an easement, but
17 that's, I don't have any knowledge of what that
18 actual agreement looks like at this point. To
19 date, it's just been some sketches that have, to
20 make sure that gates are placed in the proper
21 locations in order for Eversource to access what
22 they need to.

23 Q Right. And the purpose of the joint use
24 agreement is to ensure safe operation of the

1 transmission line as well as utilization of your
2 livestock fence; does that sound right?

3 A I would have to read the agreement, but based on
4 the title it would seem appropriate.

5 Q And based on your experience working with
6 Eversource, do you have any reason to doubt that
7 an agreement couldn't be reached on this?

8 A They've been very helpful so far. I've had some
9 technical questions as a result of these
10 expanded, the proposed transmission lines.
11 There's been technical questions because there
12 are things such as induced charges that can be,
13 basically static electricity that can build up
14 in the fence lines and trying to somehow
15 mitigate those, what's needed to be done, and
16 they've been very helpful in terms of getting
17 the answers to those questions and trying to
18 solve those problems.

19 Q Thank you. And so based on the contact history
20 that you have in front of you, the discussions
21 and the planting plan and the discussions with
22 the Joint Use Agreement, would you say that it's
23 fair to conclude that the Applicant has worked
24 in good faith to address some of your concerns?

1 A Yes, they have.

2 Q Thank you. On page 3 of your testimony, you had
3 raised some concerns about effects on property
4 values, and I believe Counsel for the Public
5 asked you that you hadn't had an independent
6 appraisal done to assess the potential impacts;
7 is that right?

8 A That's correct.

9 Q And you are not a certified appraiser, correct?

10 A I am not.

11 Q Okay. And in response to Applicant's Data
12 Request number 1 which is Applicant's Exhibit
13 260, we asked you to provide all calculations,
14 studies, reports, analyses or documents that
15 support your position about the potential for
16 impact on property values from transmission
17 lines. Do you recall that?

18 A I do vaguely recall it. Yes.

19 Q Generally, what you provided was a reference to
20 a study done by Mr. Chalmers, is that fair to
21 say?

22 A Yes.

23 Q And you also -- Dawn, a little bit lower down.

24 You referenced a Site Evaluation

1 Committee order in the Northern Pass docket,
2 does that sound familiar?

3 A Yes.

4 Q And you actually quoted some of the language
5 from the Site Evaluation Committee. Do you
6 recall that?

7 A Yes.

8 Q And this, that order was actually not available
9 when you drafted your Prefiled Testimony, is
10 that fair to say?

11 A I do not know the status of that. This was a,
12 you know, collaborative effort with my legal
13 team.

14 Q Well, you filed your Prefiled Testimony on July
15 31st, 2017; is that right?

16 A If that's the date, then I would have to agree.

17 Q And the Northern Pass order wasn't issued until
18 March 30th of 2018.

19 A Okay.

20 Q So there's no way for you to have relied upon
21 these statements when you're writing your
22 Prefiled Testimony; is that accurate?

23 A It would seem to be.

24 Q Okay. Let's set this timing issue aside.

1 Counsel for the Public had raised an issue
2 or asked you about the mitigation or claim
3 process.

4 Dawn, could we just pull up Applicant's
5 Exhibit 193 for a second, please? And Condition
6 17 to 21?

7 And Mr. Frizzell, so just so you're aware,
8 these conditions here are a mitigation and
9 dispute resolution process that will
10 specifically address concerns that you may have
11 including impacts to property values. So you
12 were not aware of this?

13 A I don't recall this.

14 Q So would you agree with me that there is now in
15 front of you a mechanism to address potential
16 concerns about impacts to property value?

17 A Well, I would need to read it.

18 Q So also in your testimony you raise some
19 concerns about impacts to wetlands and prime
20 wetlands on your property, and Counsel for the
21 Public raised some concerns about that as well.

22 Have you had a chance to review the DES
23 final permit in this matter?

24 A The final permit or -- I have not read,

1 reviewed, I don't believe I've reviewed the
2 final DES permit, but I can't say for certain.

3 Q Okay. So if you haven't read the DES final
4 permit which discusses a range of issues
5 relating to wetland and prime wetlands, would
6 you say it's fair to say that you don't know
7 today whether the DES permit satisfies your
8 concerns?

9 A I do not.

10 Q Then would you have any reason in doubting the
11 Department of Environmental Services issuing a
12 permit on wetlands?

13 A Would you repeat that?

14 Q I'm just curious to know, I mean, if you have
15 concerns about wetlands, would you agree that
16 it's within the purview of the Department of
17 Environmental Services to regulate impacts to
18 wetlands?

19 A Yes, I do, but I believe also someone can have a
20 different opinion than what they issue their
21 report on.

22 Q Sure. And you haven't raised any of these
23 conditions with the Department of Environmental
24 Services specifically, have you?

1 A No. I have not.

2 Q Thank you very much, Mr. Frizzell.

3 PRESIDING OFFICER WEATHERSBY: Thank you,
4 Attorney Dumville. Do Committee members have
5 questions for Mr. Frizzell? Mr. Way?

6 **QUESTIONS BY DIR. WAY:**

7 Q Good afternoon, Mr. Frizzell.

8 A Hello.

9 Q I'm just looking at my map here of your
10 property, and I'm trying to get a sense without
11 being able to get 3-D right down to your angle.

12 Just so I understand, so the primary view
13 is from your driveway exiting. Can you see it
14 from your house? I don't have a sense of how
15 tall the vegetation is by looking at the map.

16 A Sure. The most prevalent view of the structures
17 that are proposed are both entering my driveway,
18 following my driveway all the way into what
19 makes a turn up to my house, and then if you're
20 exiting my house, once you start, almost as soon
21 as you start heading out you see, you will see
22 the structures as well. You can see different
23 structures at different points on my driveway.

24 In terms of actually physically seeing

1 these structures from my house, yes, it's both
2 deciduous and evergreen trees that are, I don't
3 know, I'm going to guess, 40 feet tall.
4 However, they've been thinned, and you can see
5 the bases of the existing poles that are
6 currently in the field from the house and you
7 can, obviously, with bigger poles you would be
8 able to see the bases. You may not be able to
9 see the tops from my home, you would be able to
10 see the bases.

11 Q Is that true for the northern arm that splits
12 off above you?

13 A No. You currently cannot see -- you were
14 talking about after the 90-degree corners?

15 Q Yes.

16 A Yes. That section there you cannot see from my
17 house currently. However, you will be able to
18 see taller poles once those are implemented
19 there.

20 Q All right. From Fox Point Road, do you have a
21 clear view? Just wondering.

22 A You have a clear view from the street looking
23 down my driveway. You also have a very clear
24 view, I abut the school property, the Newington

1 Elementary School, and that is at the corner of
2 Fox Point and Nimble Hill Road, and that is just
3 wide open field looking across mine, and the
4 structures will be extremely visible from the
5 town's fire station and the elementary school.

6 Q Okay. Thank you very much.

7 PRESIDING OFFICER WEATHERSBY: Other
8 questions? Mr. Fitzgerald.

9 **QUESTIONS BY MR. FITZGERALD:**

10 Q Dawn, could you bring back up that stipulation,
11 paragraph 17 to 21 again.

12 While she's doing that, Mr. Frizzell, good
13 afternoon. I think you testified that you had
14 not previously been aware that there was the
15 potential for a claim mitigation process. Does
16 that provide you with any better feeling about
17 the impacts?

18 A Well, I think once I read it over and see what
19 it offers and what it actually entails,
20 certainly yes, I'm glad to know that there is
21 such a document out there and there is a
22 process. I think I have to review it to see
23 whether I feel better or the same about it.

24 Q Okay. And in your Prefiled Testimony, I think

1 you stated that you purchased this property and
2 you intended for your family to stay there for
3 life. This is not a temporary situation for
4 you. Correct?

5 A That's correct.

6 Q So would it be fair to say, assuming that your
7 property value concern could be dealt with
8 through the claims process, I assume that would
9 involve some type of postconstruction evaluation
10 of your property value and the net loss, would
11 it suffice to say that your primary concern
12 because you're going to be there and you're not
13 selling the property actually, don't intend to,
14 is the visual and aesthetic?

15 A That's correct. It's not a monetary concern of
16 mine. I'm not concerned about a monetary number
17 to make things right. I'm, you're exactly
18 right. I'm very concerned about the visual
19 impact of the size of those poles, and it's not
20 just -- one, two of these poles cross this
21 particular section of the field, and it's
22 actually, I also have two of the existing poles
23 that are going to remain. So it's double poles
24 in two locations. And there's been some

1 shifting of the poles, and there's also a 90
2 degree corner that's just off my property which
3 once again is my understanding is a sizable
4 structure when you have a 90 degree corner, and
5 that 90 degree corner is also visible and so
6 yes, they have worked with me a little bit on
7 the placement of the poles, but they also
8 shifted a pole that was off my property on to my
9 property and then eliminated a pole in the
10 middle. So what was going to be, I only have
11 two poles along that stretch right now. But
12 they added a pole and then took away a pole so
13 you know, it's, sure, I mean, they've been very
14 helpful with working with me moving it, but it's
15 really hard in a 20-acre field, in the middle of
16 a 20-acre field to hide the type of structures
17 that are being proposed from a visual
18 standpoint.

19 Q And how much property do you actually own? How
20 large is that tract?

21 A Sure. The overall tract is 36 acres. The large
22 field is about 20 acres.

23 Q So you mentioned livestock fencing. Do you
24 maintain livestock?

1 A Currently, yes. As of last year, I acquired two
2 bison, American bison, and I have some livestock
3 fencing. I'm looking to expand that into the
4 large field.

5 Q Okay. I think that's all I have. Thank you.

6 PRESIDING OFFICER WEATHERSBY: Any other
7 questions? I just have one quick question.

8 **QUESTIONS BY PRESIDING OFFICER WEATHERSBY:**

9 Q Have you had discussions with Eversource at all
10 about combining, putting distribution line on
11 the same size poles as the transmission line?

12 A Yes, early on we had that discussion.
13 Eversource was very accommodating in terms of
14 looking into that. The difficulty and certainly
15 this is open for correction because I'm not
16 Eversource, but what was received back to me is
17 that the issue became that now you were dealing
18 with something like a 95-foot pole, and they
19 would have to get reauthorization from Pease Air
20 Force base because the height of the pole would
21 be outside of some type of agreed upon height
22 concerning the airport. Now, that was quite
23 some time ago so I may have gotten it a little
24 bit wrong, but basically the answer was it's too

1 tall for where you are and something to do with
2 flight paths.

3 DIR. WAY: Attorney Needleman?

4 MR. NEEDLEMAN: Yes.

5 DIR. WAY: I'm just wondering if we might
6 be able to follow up on that one issue, the
7 statement that the transmission and distribution
8 lines being on the same pole results in a 95
9 foot or a greater height. Do we have any
10 information on that? Because I think you said
11 it was an older conversation that you had.

12 A It was. It was an older conversation.
13 Generally, Sandra Gagnon was involved with that.
14 I think it was, is it Adam, I believe, I could
15 be wrong, but who was providing some of the
16 technical side of shifting poles, eliminating
17 poles, taking a look at whether or not it could
18 be combined onto one pole. But really that
19 should go back to Eversource.

20 DIR. WAY: And that's what I'm wondering,
21 if we can just get a Data Request or response on
22 that?

23 MR. NEEDLEMAN: Sure. We can try to get
24 you a definitive answer. I think the answer,

1 and I'm not an engineer and I can't recall, was
2 that we did think about a double circuit, and it
3 was determined technically infeasible, but I
4 will try to confirm that for you.

5 DIR. WAY: Great. Thank you.

6 MR. FITZGERALD: Can I follow up with
7 Attorney Needleman?

8 MR. NEEDLEMAN: I'm trying to get answers.
9 Yes.

10 MR. FITZGERALD: Two quick questions. The
11 claims agreement, they had a term called
12 executive review and subject to executive
13 review. What does that mean?

14 MR. NEEDLEMAN: I'm going to let Beth
15 answer more specifically, but the idea was that
16 within the Eversource organization there would
17 be a team of more senior level executives who
18 would do the review at that point in the
19 process.

20 MS. MALDONADO: It's actually an existing
21 process that's in use in our customer service
22 group. When customer concerns come in, they
23 have an opportunity for an executive review. So
24 we propose to utilize that process for the first

1 step of our dispute resolution process.

2 MR. FITZGERALD: So is that a defined group
3 within Eversource or is that something that's
4 convened at the time of the --

5 MS. MALDONADO: It's a group that's
6 convened for this purpose as part of our overall
7 customer service program.

8 MR. FITZGERALD: Okay.

9 PRESIDING OFFICER WEATHERSBY: For the
10 record, it's Attorney Maldonado, is that right?

11 MS. MALDONADO: Yes.

12 PRESIDING OFFICER WEATHERSBY: Thank you.

13 MR. FITZGERALD: Second, I just wanted to
14 know, Mr. Frizzell referred to an offer to do
15 the excavation himself, and I understand that
16 probably is some, lot of significant logistics
17 associated with it as well. But do you care to
18 respond to that at all? Do you know why
19 Eversource chose not to accept or discuss that?

20 MR. NEEDLEMAN: I'm maybe going to toss
21 this back to Mr. Frizzell, but I thought that
22 was in the context of doing the excavation
23 himself if the line were underground?

24 MR. FITZGERALD: That's what I understood.

1 MR. NEEDLEMAN: Right. And it's not. So
2 I'm not sure -- but I guess it was in the event
3 that it was.

4 MR. FITZGERALD: I guess I understood it as
5 he was offering to, if Eversource would agree to
6 put the line underground, he offered to do the
7 excavation. So --

8 MR. NEEDLEMAN: Right, and I would need
9 engineering people to talk about that issue, but
10 my suspicion is that something like that would
11 probably be problematic in the context of
12 burying electric transmission lines, but I can't
13 give you more information about that without
14 checking.

15 MR. FITZGERALD: Okay. Thank you.

16 PRESIDING OFFICER WEATHERSBY: Any other
17 questions from the Committee?

18 (No verbal response)

19 PRESIDING OFFICER WEATHERSBY: Mr.
20 Frizzell, just to be clear, your offer to
21 Eversource concerning the excavation was that
22 you would either hire someone or pay for digging
23 of the excavation trench or was it that you
24 would pay for the entire cost of undergrounding

1 it through your property?

2 MR. FRIZZELL: It was to, I made the offer
3 that if they would put the line underground that
4 I would dig the trench. Obviously, I wouldn't
5 do it myself. I would hire an excavation
6 company to come in and dig the trench to help
7 offset some of that cost to put it underground
8 for my section of my property, mainly the big
9 field section, and I made that offer a couple
10 times, but it was always, I was always told no.

11 PRESIDING OFFICER WEATHERSBY: Okay.
12 Attorney Needleman, did you find an answer to
13 the question about the pole?

14 MR. NEEDLEMAN: No. We're working on that
15 one. There's a request to the engineers.

16 I think the one piece of information I got
17 was the thought that if that were to happen and
18 they were double circuited the height of the
19 poles needed to be raised and that was going to
20 trigger additional review associated with that
21 increase.

22 PRESIDING OFFICER WEATHERSBY: And H-frames
23 and other pole configurations, that's not
24 possible?

1 MR. NEEDLEMAN: My guess is, and I
2 shouldn't guess. My guess is they're going to
3 say that becomes an obstruction in the
4 right-of-way, but I don't know.

5 PRESIDING OFFICER WEATHERSBY: Any other
6 questions from the Committee? Attorney Dore?

7 MS. DORE: No.

8 PRESIDING OFFICER WEATHERSBY: Attorney
9 Lanzetta, any redirect?

10 MR. LANZETTA: No.

11 PRESIDING OFFICER WEATHERSBY: That
12 concludes our hearings for today. Ms. O'Donnell
13 is not available today, right?

14 So we'll start tomorrow morning at 9 with
15 Ms. O'Donnell, and then proceed to the Durham
16 Residents in the afternoon and hopefully
17 complete the testimony and deal with exhibits
18 afterwards and close the record tomorrow at the
19 end of the day.

20 If you have any questions about that
21 process, about any deadlines that are coming up
22 for briefs, you can see Ms. Monroe or myself and
23 we'll clarify things for you. Thank you, and
24 we'll see you tomorrow.

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(Whereupon Day 14 Afternoon Session
adjourned at 3:50 p.m.)

C E R T I F I C A T E

I, Cynthia Foster, Registered Professional Reporter and Licensed Court Reporter, duly authorized to practice Shorthand Court Reporting in the State of New Hampshire, hereby certify that the foregoing pages are a true and accurate transcription of my stenographic notes of the hearing for use in the matter indicated on the title sheet, as to which a transcript was duly ordered;

I further certify that I am neither attorney nor counsel for, nor related to or employed by any of the parties to the action in which this transcript was produced, and further that I am not a relative or employee of any attorney or counsel employed in this case, nor am I financially interested in this action.

Dated at West Lebanon, New Hampshire, this 29th day of October, 2018.

Cynthia Foster, LCR